

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

November 17, 2003

CALL TO PODIUM:

**Trudy Schwarz, Community
Planning Director**

RESPONSIBLE STAFF:

**Trudy Schwarz, Community
Planning Director
Patricia Patula, Planner**

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
<input checked="" type="checkbox"/>	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item
is a public hearing)

Introduced	NA
Advertised	10-01-03
	10-15-03
Hearing Date	10-20-03
Record Held Open	11-6-03
Policy Discussion	11-17-03

TITLE:

Policy Discussion

Z-295 (o) Requests rezoning of 15,439 square feet of land, currently known as Part of Lot 12 and Part of Lot 13, Block I, Russell and Brookes Addition, located at 12 Russell Avenue, in the City of Gaithersburg, from the existing R-90 (Medium Density) Zone, to the CBD (Central Business District) Zone, under the Optional Method of Rezoning, in accordance with Section 24-196 (map amendments) and Section 24-198 (optional method) of the City Code.

SUPPORTING BACKGROUND:

The joint public hearing was held on this case on October 20, 2003, and was followed by the Planning Commission's recommendation for approval on November 5, 2003.

Additional exhibits received since the public hearing are attached and are listed in the Index of Memoranda in bold. In particular are a revised covenant with a conceptual site plan and elevations of a proposed structure. The covenant is a required element of a rezoning done under the optional method.

Staff will give a brief synopsis of the staff analysis (Exhibit 34) along with recommended conditions should the application be approved.

Attachments:

Index of Memoranda

Exhibits received since the public hearing

DESIRED OUTCOME:

Approval with conditions

Mayor and City Council
And Planning Commission
October 20, 2003

INDEX OF MEMORANDA
Z-295 (O)

- | No. | Exhibit |
|------------|---|
| 1) | Application for Amendment to the Zoning Map |
| 2) | Statement Demonstrating a Change in Neighborhood |
| 3) | Adjoining and Adjacent Property Owners |
| 4) | Declaration of Covenants |
| 5) | Map showing surrounding zoning |
| 6) | Tax Assessment Ownership Record Lot P12 |
| 7) | Tax Assessment Ownership Record Lot P13 |
| 8) | Ordinance to Abandon Alley at 12 Russell Avenue |
| 9) | Excerpt Zoning Ordinance Section 24-198 Optional Method |
| 10) | Excerpt Zoning Ordinance Section 24-160F.1 CBD Zone Purpose |
| 11) | Letter to Gazette requesting legal advertisement of Joint Public Hearing in the October 1 and 15, 2003 issues |
| 12) | Notice of Joint Public Hearing sent October 3, 2003, to required parties |
| 13) | Letter dated October 14, 2003 from James Clifford to Planning Commission Chairman Blanche Keller regarding a waiver for the driveway width and parking spaces |
| 14) | Schematic Development Plan (Reduced Version) |
| 15) | Natural Resource Inventory (Reduced Version) |
| 16) | Schematic Development Plan (Full Size) |
| 17) | Natural Resource Inventory (Full Size) |
| 18) | Property Map |
| 19) | Receipt for the application fee |
| 20) | M&CC Agenda Cover Sheet for October 20, 2003 |

- 21) Letter, dated 10/17/2003, from Mr. & Mrs. Corrigan, 21 Brookes Ave
- 22) Letter, dated 10/17/2003, from Mrs. Nanci Sharp, 16 Russell Ave
- 23) Letter, dated 10/17/2003, from O'Neill Land LLC
- 24) Letter, dated 10/17/2003, from Alan Nichols, 8 Russell Avenue Condominium Association
- 25) Transcript of the October 20, 2003 Joint Public Hearing
- 26) Fax received 10/30/2003 from Karl Pavlovic, 22 Brookes Avenue
- 27) Notes received 10/30/2003 from Michael Wiencek, 19 Brookes Avenue and a marked up schematic development plan
- 28) Letter, received 10/30/2003 from James Clifford
- 29) Revised covenant
- 30) Architectural elevations of the proposed "carriage house"
- 31) Floor plan of the proposed "carriage house"
- 32) Revised schematic development plan (Reduced Version)
- 33) Revised schematic development plan (Full Size)
- 34) Staff Analysis
- 35) Letter, received 11/5/2003 from James Clifford
- 36) Letter, received 11/5/2003 from James Clifford
- 37) Letter, dated November 6, 2003 from Karl Pavlovic
- 38) CPC, recommendation from Planning Commission November 5, 2003 meeting

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Planning Commission

FROM: Jennifer Russel, Director, Planning and Code Administration

DATE: October 31, 2003

SUBJECT: Staff Analysis Z-295(o) - The application requests a rezoning of 15,439 square feet of land, currently known as part of Lot 12 and part of Lot 13, Block 1, Russell and Brookes Addition, located at 12 Russell Avenue, in the City of Gaithersburg from the existing R-90 (Medium Density Residential) Zone to the CBD (Central Business District) Zone, under the Optional Method of Rezoning, in accordance with Section 24-196 (map amendments) and Section 24-198 (optional method) of the City Code.

APPLICANT:

Matthew and Maria Glinsmann
21508 Manor View Circle
Germantown, Maryland 20876
301-548-0550

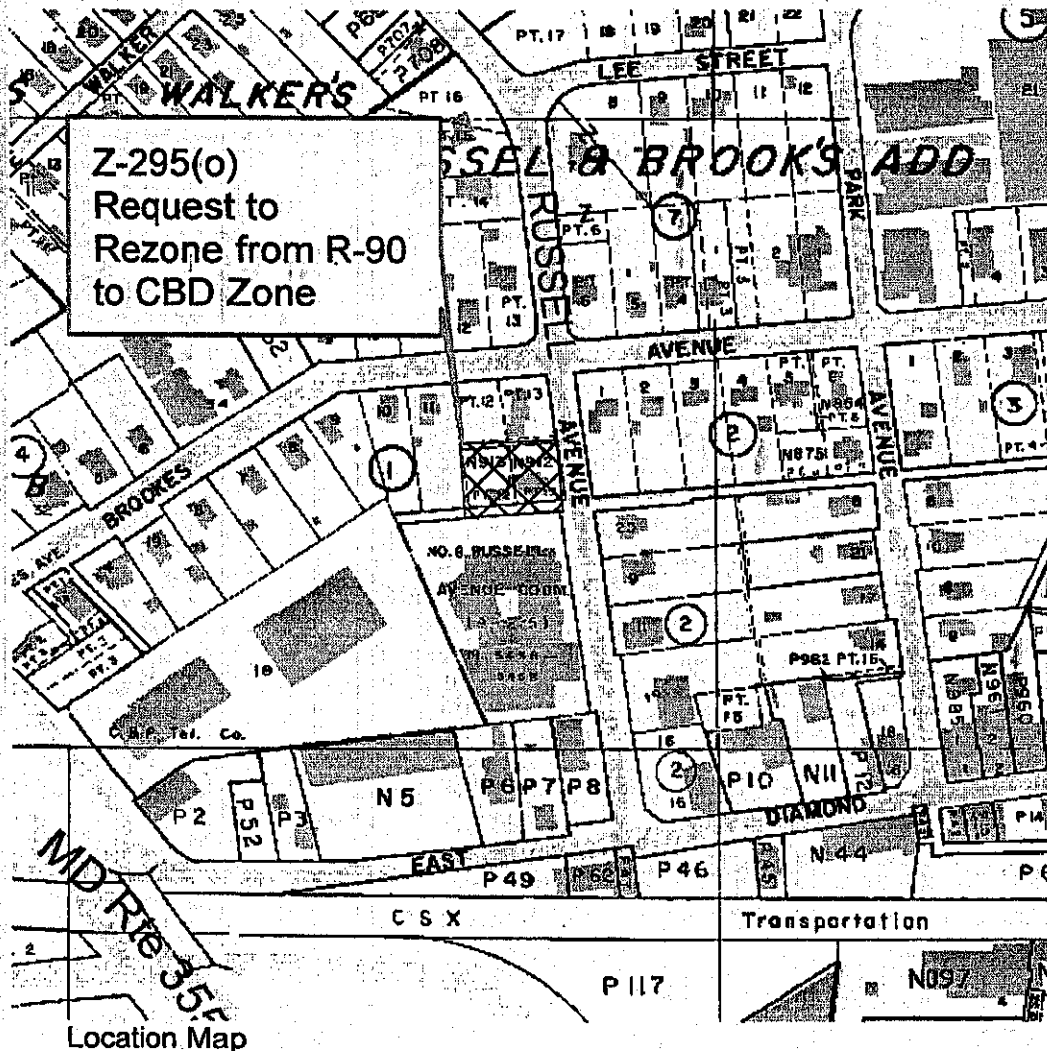
REQUEST:

This is a request to consolidate two lots, Part of Lot 12 (N913) and Part of Lot 13 (N912) of Block 1 of the Russell and Brookes Addition to Gaithersburg, into one parcel and rezone it from the R-90 (Medium Density Residential) Zone to the CBD (Central Business District) Zone. The consolidation also includes approximately 2,191 square feet of an alley abandoned September 2, 2003 (City Case Number AB-56). The subject property, i.e., both lots and the portion of the abandoned alley, consists of 15,439 square feet of land and is addressed as 12 Russell Avenue, Gaithersburg, Maryland.



LOCATION:

The subject property is located one lot away from the southwest quadrant of the Brookes and Russell Avenues intersection in Gaithersburg, Maryland. It is immediately north of the Olde Towne District of Gaithersburg.



TAX MAP REFERENCE:

FT562

TAX ACCOUNT NUMBERS:

Parcel N912, Lot P13, Block 1 09-00843182 (lot with improvement)

Parcel N913, Lot P12, Block 1 09-00843171

The alley portion does not have a tax account number.

BACKGROUND:

Statistics of Site - This parcel consists of parts of two lots which were resubdivided to allow for the residences to face Russell Avenue (prior to the construction of the house in 1906). Together as a unit, the two portions of the lots are comparable to other single lots in the Russell and Brookes Addition. The subject property consists of 6,624 square feet for the parcel described as Part of Lot 12 (N913) and 6,624 square feet as Part of Lot 13 (N912). The abandoned alley brings the total area of the property to 15,439 square feet. The primary structure, a two- and a half-story stucco house built circa 1906, contains 1,900 square feet of space (excluding the attic level). An outbuilding on the site is slated for removal.

Master Plan and Zoning History - Before the adoption of the 1970 City of Gaithersburg Master Plan, the existing land use for this parcel was "low density residential" with an overlay of R-90 Zoning. The 1970 Master Plan modified the land use designation to "commercial-industrial." This designation included the portion of Russell Avenue from Brookes Avenue to East Diamond Avenue. The zoning remained R-90. The "commercial-industrial" land use was reaffirmed in the 1974 Master Plan. In response to citizen input concerning preserving the historical properties in Gaithersburg, the 1982 Master Plan restored the "low density residential" land use category and retained the R-90 Zone classification. In 1997, the Master Plan (currently in force) stipulated that the front half of this property, legally identified as Part of Lot 13 (N912), be reassigned to the "mixed use" land use designation similar to the rest of the Olde Towne District. At that time, the Olde Towne commercial area was overlaid with the CBD (Central Business District) Zone, a zone created specifically to help revitalize the "historic heart of the City." The zoning on this parcel remained R-90 to allow a development plan to be submitted to the City at the time of rezoning.

Historic District Site - On April 20, 1987, this site was included in the formal establishment of the Brookes, Russell, Walker Historic District (City Case Number HD-14) as a contributing resource. The basis of the designation was the architectural integrity of the architecture of the neighborhood which is clearly demonstrated in the historic structures in this block. On February 19, 2002, the Historic District was expanded to include five additional sites across the street from this property, namely 101 and 103 Brookes (as non-contributing resources and zoned R-90) and 7, 9, and 11 Russell (as contributing resources and already zoned CBD). This was the first time the Historic District overlapped CBD Zoning (although historic districts overlap other zones in both of the City's existing districts.)

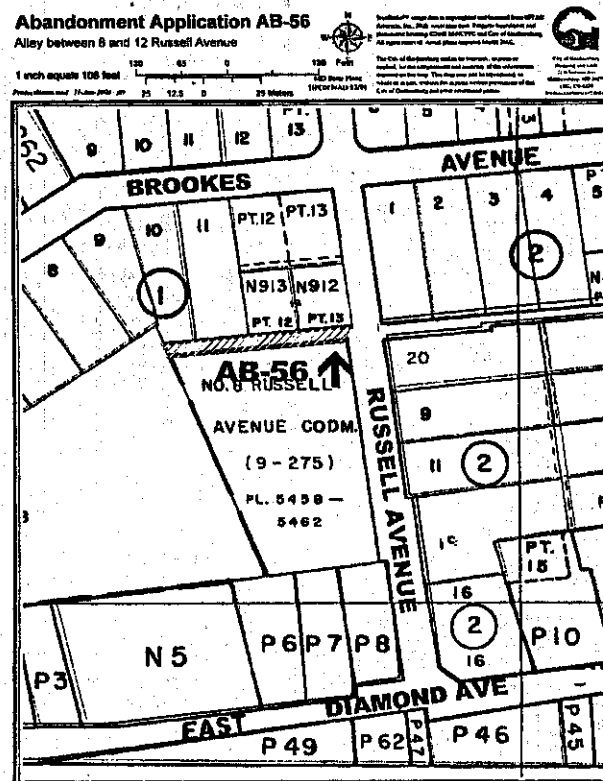
Historically, the three properties on Russell Avenue added to the Historic District started out as residences whose original owners worked very close by on East Diamond Avenue. The house now at 7 Russell, moved from 8 Russell, served as both office and home to Frank Broschart, a well-known medical doctor in Gaithersburg during the early 1900s. The houses now serve as professional offices with a residential element in 7 and 9 Russell Avenue.

On May 8, 2003, the Historic Preservation Advisory Committee provided a preliminary consultation on the schematic development plan. Although the emphasis of the discussion centered on materials and architectural design in accordance with the Secretary of the

Interior Standards for Rehabilitation, the committee expressed support for the project provided the rezoning would be approved to allow for the increased density.

On July 21, 2003, the Historic District Commission granted a historic area work permit to this property for the removal of the outbuilding and changes to the exterior of the house which included an exterior stair for egress from the second story, replacement of windows and roof, and a side/rear handicapped ramp—elements that would allow office use for the building.

Abandonment of Alley - On September 2, 2003, the City Council voted to approve AB-56, the abandonment application of the 15-foot wide alley lying adjacent to Lots 10 through 13 and Parcel A, Block 1, perpendicular to Russell Avenue. Adjacent property owners supported the abandonment. The Glinsmanns have included a portion of the abandoned alley contiguous to their property within their schematic development plan.



EXISTING LAND USE/PHYSICAL CHARACTERISTICS:

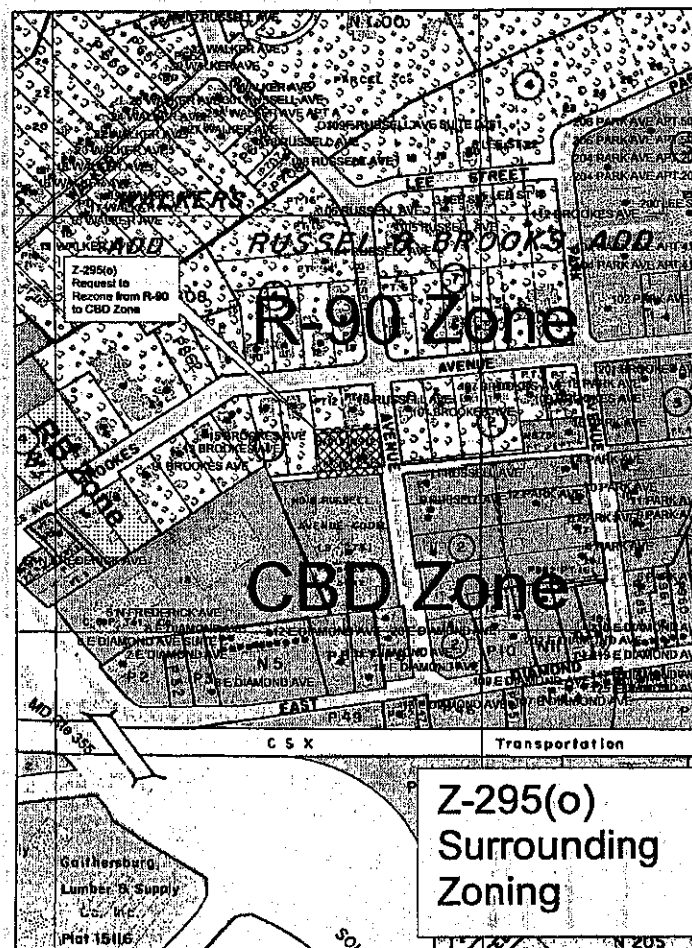
This one-third acre parcel is fairly level, and is located within the Great Seneca Creek Watershed. The historic Foursquare House is situated to the south side and front of the property. This location leaves a wide open area to the rear and to the side in which there are trees of varying size and condition, four of which would be removed for the project if the rezoning is approved. The stucco house, circa 1906, has a concrete wrap-around front porch and a large two-story bay on the south elevation. A gravel area serves as an entrance/driveway into the property to provide off-street parking. A large outbuilding (20' x 30' or 600 sq.ft.) close to the rear of the house is slated for removal. This property abuts other residences of the Brookes, Russell, Walker Historic District except on the south side, where it is neighbor to a multi-story condominium building whose first floor devoted to professional office use. There are no streams, wetlands or (NRI) other environmentally

sensitive feature on or adjacent to the site. A Natural Resources Inventory has been prepared to accompany the application and provides full details of existing conditions.

TRANSPORTATION:

The property is adjacent to and abutting Russell Avenue, a major link on the local bus system. Ride On Bus Route 57, which operates from Shady Grove Metro to Lakeforest Mall and Asbury Village through Olde Towne, continues to be one of Ride-On's strongest performing routes carrying over 1,600 riders per weekday. Russell Avenue is a City-maintained roadway. Given the intended use of the property, the pedestrian access to the site via existing sidewalks on both sides of the street is quite adequate. Parking in the vicinity is permitted on both sides of Russell Avenue at this point as well.

NEIGHBORHOOD LAND USE AND ZONING:



The property is bounded on the east and north by a residential neighborhood zoned R-90. To the southeast are the large historic residences converted to office use and zoned CBD (Central Business District). Directly south of the property is a large condominium building with office uses on the first floor, also zoned CBD, and other non-residential structures and uses of the Olde Towne area.

PROPOSED USE/ZONING:

State law requires the applicant must demonstrate either a mistake or change in the neighborhood as a basis for a rezoning to a Euclidean Zone. The applicant discussed the following concerning a change in the neighborhood. The neighborhood, for the purposes of this rezoning, is defined by the applicant as "all those lots on Russell Avenue from Diamond Avenue to Brookes Avenue and all those properties that adjoin those lots, both inside and outside the Brookes, Russell, Walker Historic District, including both those properties within the CBD Zone and those properties in the R-90 Zone." The addresses include 3, 7, 8, 9, 11, and 16 Russell Avenue; 20 and 106 East Diamond Avenue; and 19, 21, 101, and 103 Brookes Avenue.

The house at 12 Russell Avenue, along with the structures at 7, 9, and 11 Russell Avenue, create an impressive streetscape of prominent historic homes. The latter have been converted to office uses, with some residential use, whereas retention of this property as a residence, due to its zoning, did not serve it well over the years where it fell into neglect and deterioration and, as a result, prolonged vacancy. While the other homes, literally across the street, were able to take advantage of CBD Zoning in order to be eligible to participate in the Façade Easement Program, this site could not. The recent expansion of the Brookes, Russell, Walker Historic District to include 7, 9, and 11 Russell Avenue has opened the doors to even more financial incentives, namely, the Montgomery County Property Tax Credit, and the state and federal tax credits for historic restoration as these are now all in the "income-producing" category. Over the past decades, the uses on the street have slowly changed from residential to office.

However, the CBD (Central Business District) Zone is considered a floating zone and its purpose is to foster revitalization by promoting a desirable mix of commercial, office and residential uses, to encourage development, increase in density and intensity of use, and flexibility in use and layout. While the applicant made a case for change in the neighborhood, floating zone changes are not required to establish change or mistake in the neighborhood.

In reviewing the 1997 Master Plan, the mixed use land use was clearly established on this property. The adjoining properties on the same land use are zoned CBD, so it would be consistent to zone this property in the same category. The proposed schematic plan is in conformance with the purpose of the CBD Zone.

Notes:

Topography shown is one-foot contour interval as prepared by Thomas A. Hudson, Professional Land Surveyor from an actual field survey.

Friends P. & W.L. Conigan
#21 Brookes Ave.
Lot 11

Lot 14

No. 8 Russell Avenue Condo.



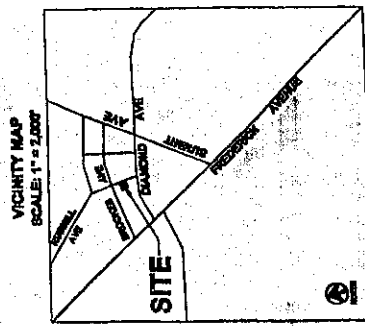
**SCHEMATIC DEVELOPMENT PLAN
12 RUSSELL AVENUE**

City of Gaithersburg, Maryland



Planning & Associates, Inc.
Local Planning Consultants
8703 Shady Grove Court
Gaithersburg, MD 20877
(301) 949-0246

PREPARED FOR
MATTHEW & MARIA GLINSMANN
POTOMAC VALLEY BANK BUILDING
702 RUSSELL AVENUE, SUITE 312
GAITHERSBURG, MARYLAND 20877
301-472-4643



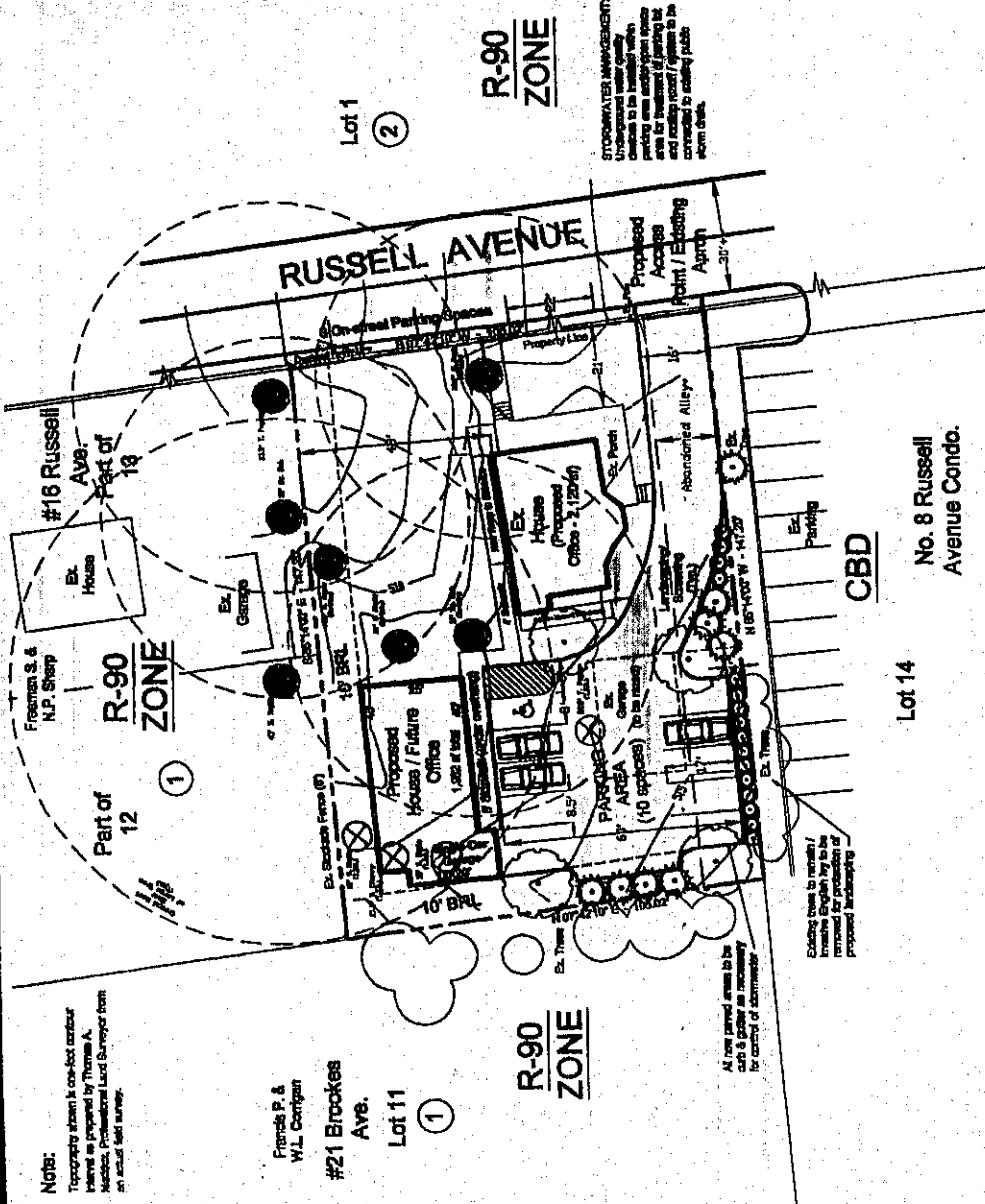
- GENERAL NOTES:**
1. Area of Property - 15,438 sq. ft. (includes adjacent abandoned public alley)
 2. Existing Zoning - R-90
 3. Existing Use: Single-Family Residence (vacant)
 4. Proposed Zoning: CBD
 5. Proposed Use: Professional Office
 6. Total Gross Floor Area: 4,082 sq. ft. (see table)
 7. Number of Parking Spaces Required: 14 spaces
 8. (1) 6,000 sq. ft. of office space (vacant needed)
 9. Height of Proposed Building (mean height between street and alley) - 18' 6"
 10. Height of Existing Building - 20' 0"
 11. Total Lot Coverage - 3,375 sq. ft. (22.5%)
 12. Total Impervious Area - 6,000 sq. ft. (39%)
 13. Total Area of Disturbance - 6,000 sq. ft.
 14. Parking area lighting and other outdoor lighting to comply with "dark sky" lighting requirements.
 15. Abandonment of existing building and other requirements to be met with on-site landscaping.

- PARKING NOTES:**
1. Number of defined parking spaces required - 14
 2. Number of defined spaces shown - 15 (includes 1 space space)
 3. Number of existing spaces required - 1
 4. Number of existing spaces shown - 1 (see table)
 5. Number of existing spaces of convenient access to the site - 3

Tree Preservation Notes:
The following tree(s) are to be preserved upon development of this site:

1. Tree #1: 10' dbh (1' over 10')
 2. Tree #2: 10' dbh (1' over 10')
 3. Tree #3: 10' dbh (1' over 10')
 4. Tree #4: 10' dbh (1' over 10')
- All other trees shown are to be removed. Existing trees of 10' dbh or greater are to be preserved. Existing trees of 10' dbh or greater are to be preserved. Existing trees of 10' dbh or greater are to be preserved.

PROPOSED MANAGEMENT:
The proposed management plan for the site is to be developed by the owner. The proposed management plan for the site is to be developed by the owner. The proposed management plan for the site is to be developed by the owner.



**ROSENBERG A-I
ARCHITECTURE - INTERIORS**
315 EAST 81st AVENUE, SUITE 2
BAYTHERIDGE, MARYLAND 20677-2105
TEL: 301-221-1111
FAX: 301-221-1111
WWW.ROSENBERG-A-I.COM

DATE: 10/27/2003

OWNER:

DATE:

DATE:

**THE
GLINSMANN
CARRIAGE HOUSE**
12 RUSSELL AVE.
BAYTHERIDGE, MD 20677

PROJECT: GLINSMANN CARRIAGE HOUSE

DATE: 10/27/2003

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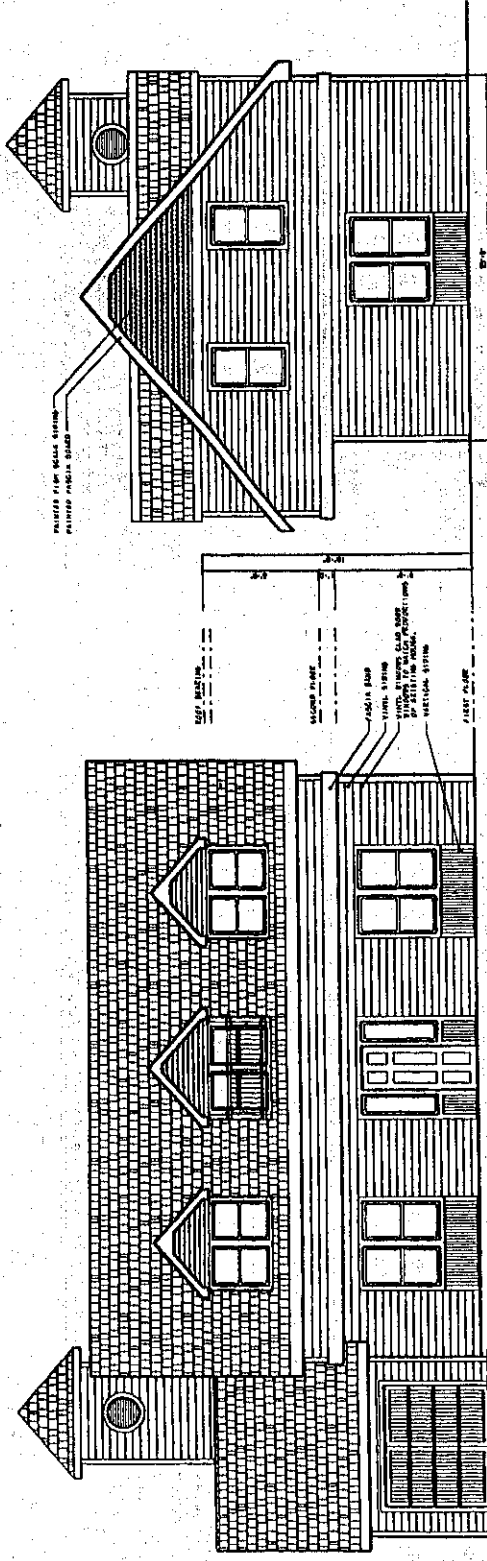
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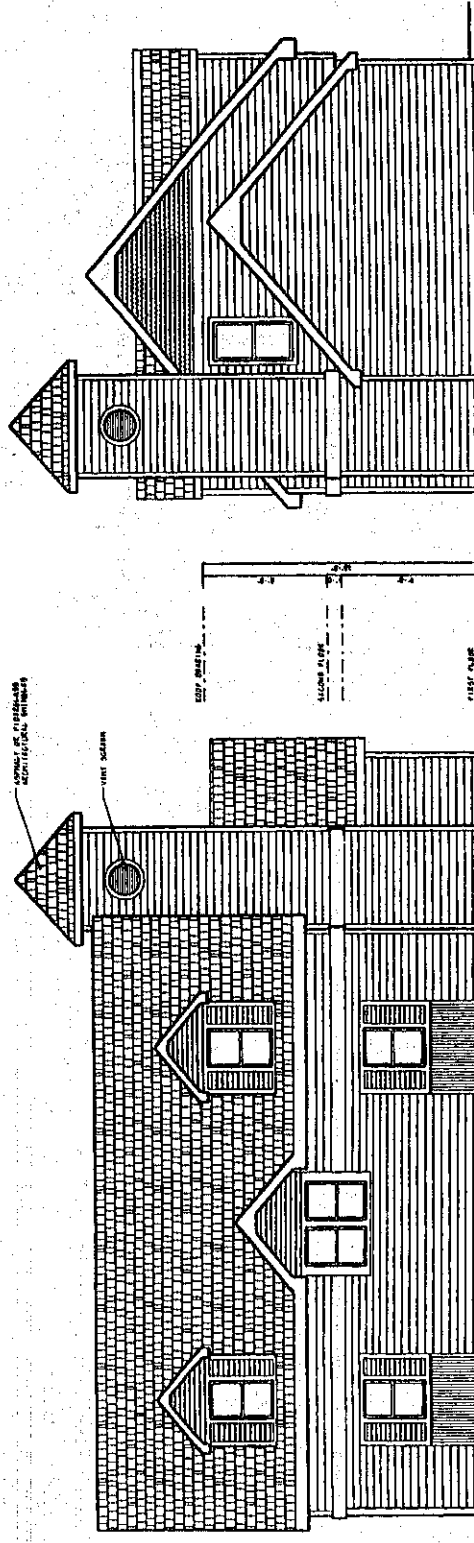
DATE: 10/27/2003

A-3



1. FRONT ELEVATION, FACING NORTH

1. FRONT ELEVATION, FACING NORTH



2. SIDE ELEVATION, FACING EAST

2. SIDE ELEVATION, FACING EAST

Optional Method of Rezoning - The application proposes to rezone the property to the CBD (Central Business District) Zone under the optional method. This approach to rezoning a property requires the submission of a schematic development plan with elements required by §24-198(a) as part of the rezoning application. The schematic development plan is for the purpose of limiting a development standard or standards to less than the maximum permitted in the requested zone and/or limiting the land use of the applicant's subject property to one or more of the permitted uses in the zone. A covenant detailing the restriction of use and/or development standards is required and, after recordation in the County Land Records, will be in effect until such time as the property is rezoned. Approval by the City Council will allow only the requested development or use to occur.

The owners of the property intend to convert the primary residential structure (2,120 sq.ft.) into professional office space, while meeting all required codes and following the processes for changes to a historic structure. Further, they plan to erect a secondary "carriage-style" structure (1,962 sq.ft.) at the rear of the site for use as a residence (initially) and/or professional office.

The property is now zoned R-90 (Medium Density Residential). This zone is intended to stabilize and protect such residential areas as well as to provide for a varied urban residential pattern that encourages a range of dwelling types. The applicant believes that the change in zoning and subsequent use restricted by the covenant, will preserve the historical and residential appearance of the neighborhood that now exists and be in conformance with the 1997 Master Plan land use of mixed use development on the property.

Optional Method Covenant - In accordance with §24-198(b), a covenant has been prepared stating the restrictions on the uses and development proposed for this property. In summary, it is as follows:

1. The **use of the buildings** on the property, both future and proposed and not to exceed two in number, shall be restricted to residential and/or professional office uses exclusively and to the square footage on the plan.
2. **One new building** to be constructed in the rear of the property will be of a "carriage house" style limited to two stories in height, and will comply with the Design Guidelines of the Brookes, Russell, Walker Historic District.
3. The **existing two and a half-story house** will be converted to professional office space and restored under the regulations of the Brookes, Russell, Walker Historic District Design Guidelines.
4. A ten-space **parking area** will be constructed in the rear with an additional four spaces provided on the street.

Waiver Requests - The applicants are requesting a parking waiver for four (4) of the required fourteen (14) parking spaces on the subject site. Although this waiver would not be needed until such time as the carriage house is converted from residential to office, it was felt that the waiver request would be best acquired at the time of the rezoning. The schematic development plan shows ten (10) parking spaces to be created on site to the rear of the existing residence. These are sufficient for the initial intended uses. Should the

later utilization of the carriage house as an office materialize, four more spaces would be required. These can be accommodated by on-street parking directly in front of the building.

A waiver is also requested for the width of the proposed driveway which will lead to the rear of the property to the parking area to retain the residential appearance from the street. The applicant requests to minimize the width of the driveway so that it would be sixteen (16) feet wide versus the twenty (20) feet required for a commercial two-way entrance. It is anticipated that the traffic flow in and out of this site will be minimal, similar to other homes converted to offices within this area. Waivers of this nature are critical to successful adaptive reuses.

STAFF ANALYSIS:

A joint public hearing was held on this application on October 20, 2003. Mr. James Clifford, counsel for the applicants, presented the application as depicted in the preceding text. During the public hearing, concern was voiced by adjacent property owners relative to the density of the proposed project. Further discussion has revealed a concern that this rezoning and its incumbent development might spur additional encroachment of the CBD Zone and increased density farther into the Historic District. An additional letter was submitted proposing shifting the proposed building. This would require the removal of two substantial trees (20-inch Maple and 31-inch Oak).

The fluctuation of land use designations for this property in the City Master Plans since 1970, i.e., low density residential to commercial-industrial back to low-density residential and then to mixed use, demonstrates the pivotal nature of this parcel. As was noted previously, the 1997 Land Use Master Plan designated the front portion (Part of Lot 13) of this property as "mixed use," indicating the expectancy for its future inclusion in the CBD Zone. Since the two lots are planned to be resubdivided into one parcel as part of this rezoning, dividing the zones and/or uses mid-lot is impractical and, therefore, the entire parcel should be one land use and zone category. The City should reinforce the land use on this property and the residential land use of the neighboring properties with the adoption of the pending Master Plan.

The City Development Review Team (DRT) analyzed the schematic development plan, which in accordance with §24-198, complies with the level of conceptual site plan of the City Site Development Check List. Comments from the DRT have been incorporated by the applicant. The schematic development plan, if approved, would require preliminary and final site plan approval and Historic District Commission approval before the issuance of any site work permits. (The applicant has received a building permit to work on the house.) Staff has requested that the applicant incorporate the schematic development plan and the architectural elevations in the covenant which will establish a height and square footage maximum. Since this property is located in the Brookes, Russell, Walker Historic District, additional reviews are required to comply with the requirements of the District. (The applicant has been working with the Historic Preservation Advisory Committee to obtain advice on this project.)

STAFF RECOMMENDATION:

Staff recommends approval of the request to rezone the subject property from R-90 to CBD. The following reasons constitute the rationale to support the rezoning of the property:

1. The parcel abuts the CBD Zone and Olde Towne District on its south side.
2. The 1997 City Land Use Master Plan designated Part of Lot 13 (front portion of the parcel) as "mixed use" laying the groundwork for its future inclusion in the CBD Zone.
3. A change in the neighborhood has occurred with the shift from the early residential uses to a combination of office uses with some residential elements. The R-90 Zone was clearly left on the property as a holding zone to enable a development plan to be established.
4. The historical location of these houses as adjuncts to the commercial center of town is well documented in the research carried out in 2001 for the expansion of the Brookes, Russell, Walker Historic District. The combination of residence and office uses existed from the earliest days.
5. The project has the support of the Historic Preservation Advisory Committee who provided a preliminary review of the schematic development plan and its effect on the Brookes, Russell, Walker Historic District.

Staff recommends approval of Z-295(o) with the following conditions:

1. The Forest Conservation Plan is to be approved before final plan approval.
2. The Covenant for Z-295(o) is to be recorded in the Land Records of Montgomery County before the issuance of any permits.
3. A Historic Area Work Permit (HAWP) for all pertinent elements of the plan is to be approved before the issuance of any permits. (Not all HAWP elements need to be approved before building can occur, e.g., the railing on the porch which is under review.)
4. Final Site Plan Approval, including waivers for parking spaces and drive aisle width, is to be obtained from the Planning Commission.
5. The Record Plat is to be recorded before use and occupancy of the primary structure.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Patricia Patula, Planner

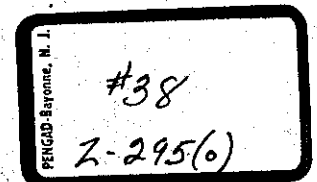
DATE: November 10, 2003, 2003

SUBJECT: Z-295(o) -- Request to rezone 15,439 square feet of land, currently known as part of Lot 12 and part of Lot 13, Block 1, Russell and Brookes Addition, located at 12 Russell Avenue, in the City of Gaithersburg, from the existing R-90 (Medium Density Residential) Zone to the CBD (Central Business District) Zone, under the Optional Method of rezoning, in accordance with §24-196 (map amendments) and §24-198 (optional method) of the City Code.

At its regular meeting on November 5, 2003, the Planning Commission made the following motion:

Commissioner Hicks moved, seconded by Commissioner Winborne, to recommend Map Amendment Z-295(o) for APPROVAL to the Mayor and City Council, with the following conditions:

1. The Forest Conservation Plan is to be approved before final plan approval;
2. The Covenant for Z-295(o) is to be recorded in the Land Records of Montgomery County before the issuance of any permits;
3. A Historic Area Work Permit (HAWP) for all pertinent elements of the plan is to be approved before the issuance of any permits. (Not all HAWP elements need to be approved before building can occur, e.g., the railing on the porch which is under review.)



22 Brookes Ave.
Gaithersburg, MD 20877
November 6, 2003

The Mayor and City Council of the
City of Gaithersburg
11 South Summit Avenue
Gaithersburg, MD 20877

Re: Z295(o) Zoning Map Amendment – 12 Russell Avenue

Dear Mayor and City Council:

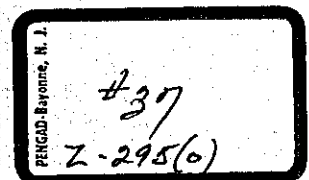
My wife and I are the owners of and residents in 22 Brookes Avenue in the Brookes, Russell, Walker Historic District in which the above referenced property is also located. We have reviewed the applicant zoning request file, are satisfied that the proposed Optional Method covenant restricts use of the property to protect and preserve the historic residential character of the neighborhood, and support the applicants development of a property that through neglect has become an eyesore from both the residential and commercial perspectives.

Our concern is not with the proposed use of the property, but rather with the underlying amendment to the zoning map to which it is proposed to attach the covenant. Specifically, we believe that the proposed CBD designation is inconsistent with the residential character of the Brookes, Russell, Walker Historic District and would create a predicate for future commercial creep into that residential historic district.

In bringing this concern to your attention, we understand that land use and zoning designations are never forever. There may well come a time when the growth and development of City within the existing land use zones surrounding the Brookes, Russell, Walker Historic District render residential land use of the Historic District untenable and inappropriate. That time, however, has not yet come and, when it does come, the appropriate way to deal with it will be with a comprehensive Land Use Master Plan revision and appropriate zoning overlay.

The recommendation to approve the request to rezone the property from R-90 to CBD contained in the October 31 Staff Report to the Planning Commission rests upon two facts and an assertion that is contradicted by one of the facts. The facts are (1) that the 1997 Land Use Master Plan designated the front portion of 12 Russell mixed use and (2) that the combination of residence and office uses has existed in that area of the City from the earliest days. The assertion is that "a change in the neighborhood has occurred with the shift from early residential uses to a combination of office uses with some residential elements – an assertion clearly contradicted by the second fact above.

From these two facts and the contradicted assertion, the Staff Report erroneously concludes that the "mixed use" land use designation laid "the groundwork for [the property's] future inclusion in the CBD Zone" and "the R-90 Zone was clearly left on the property as a




holding zone to enable a development plan to be established." This reasoning is, however, clearly wrong. First, the R-90 Zone was left on the property because that was the existing zoning designation and the "mixed use" land use designation does not imply a specific zoning designation. Second, if the "mixed use" land use designation laid the ground work for anything, it was the future rezoning of the property as Residential Buffer given that the property is part of the residential historic district.

I am intimately familiar with the history of the changing land use designations in the City, having served as Co-Chair of the Ad Hoc Committee that undertook the revision of the transportation element of the 1974 Master Plan. 12 Russell's commercial-industrial land use designation in the 1970 and 1974 Master Plans, referred to in the Staff Report, was the result of a vision of intense urban commercial development along a corridor running from Old Town to the intersection of 355 and Montgomery Village Avenue. The City rejected that vision in the 1982 Master Plan, replacing it with a vision of redeveloping the historic commercial center of the City while preserving the surrounding residential neighborhoods. The land use redesignation of 12 Russell as low density residential, the Residential Buffer zoning of the properties at the intersection of 355 and Brookes Avenue and the creation of the Brookes, Russell, Walker Historic District were steps towards implementation of this vision as was the subsequent redevelopment plan for the Olde Towne District.

So long as the City's policy is to both redevelop the historic commercial center of the City and preserve the residential neighborhoods surrounding it, there will be a tension and a struggle along the boundary in which the residential neighborhoods are the weaker party. The appropriate means to balancing this tension is to restrict land use along the boundary to uses that buffer the residential properties from the commercial land uses and to zone those buffering properties with a designation that presumes in favor of residential land use.

We believe the facts cited in the Staff Report and the City's policy of redeveloping the historic commercial center of the City while preserving the surrounding residential neighborhoods support rezoning 12 Russell to RB with the proposed covenant, not to CBD. RB zoning (1) would recognize the fact of the commercial use of the historic housing in the adjacent CBD zone and (2) would, with the optional method covenant, buffer the residential neighborhood from the commercial development in the adjacent CBD zone. The optional method covenant may be used with the RB Zone and RB zoning would not impact the applicant's proposed use of the property. We urge you to rezone the applicant property to RB with the optional method covenant, rather than the proposed CBD with the optional method covenant.

Sincerely,



Karl Richard Pavlovic

CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.

ATTORNEYS AT LAW

Olde Towne Professional Park
320 East Diamond Avenue
Gaithersburg, Maryland 20877-3016

James R. Clifford, Sr. (MD, VA)
James J. Debelius (MD)
Gary L. Crawford (MD, DC)
James A. Bonifant (MD)
E. Joseph Fitzpatrick, Jr. (MD, DC, TN)

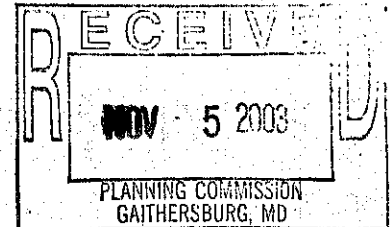
(301) 840-2232

fax (301) 975-9829

John W. Debelius (1926-1984)

November 6, 2003

Mayor Sidney Katz
City Council Members
City of Gaithersburg
11 South Summit Avenue
Gaithersburg, MD 20877



Re: Matthew and Maria Glinsmann
12 Russell Avenue
Gaithersburg, MD

Dear Mayor and City Council Members:

It has been brought to my attention that under Section 24-160 F.4 (b)(3) of the Municipal Zoning Code for the City of Gaithersburg, there is a fifteen foot (15') set back requirement for properties within the CBD zone that adjoin properties within a residential zone. The concept plan which has been submitted with the rezoning application for the above referenced property relies on a ten foot (10') set back. If the fifteen foot (15') CBD zone set back is imposed, the improvements designed for this property will not work. Therefore, pursuant to Section 24-160 F.5(b) (2) and (3), we would ask that the fifteen foot (15') set back requirement be waived for the back side of this property, as well as the side adjacent to 16 Russell Avenue and 21 Brookes Avenue.

Thank you for your consideration of this request. Should you require additional information, please do not hesitate to contact me.

Sincerely,

CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.

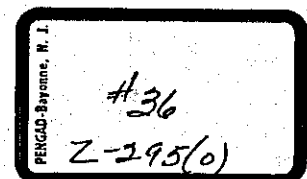
A handwritten signature in black ink, appearing to be "James R. Clifford, Sr.".

JAMES R. CLIFFORD, SR., ESQ.

JRC/dlh

cc: Matthew and Maria Glinsmann

G:\DATA\DCD\REALEST\Glinsmann Russell Avenue\mayor and city council 11 04 03.wpd



CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.

ATTORNEYS AT LAW

Olde Towne Professional Park
320 East Diamond Avenue

Gaithersburg, Maryland 20877-3016

(301) 840-2232

fax (301) 975-9829

John W. Debelius (1926-1984)

James R. Clifford, Sr. (MD, VA)

James J. Debelius (MD)

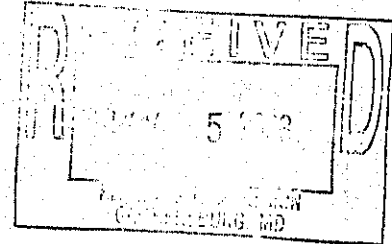
Gary L. Crawford (MD, DC)

James A. Bonifant (MD)

E. Joseph Fitzpatrick, Jr. (MD, DC, TN)

November 6, 2003

Mayor Sidney Katz
City Council Members
City of Gaithersburg
11 South Summit Avenue
Gaithersburg, MD 20877

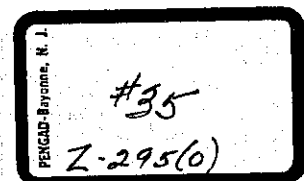


Re: Matthew and Maria Glinsmann
12 Russell Avenue
Gaithersburg, MD

Dear Mayor and City Council Members:

I have been in conversation with Karl Pavlovic and Michael Weincek regarding their concerns about the above referenced property.


Mr. Pavlovic has questioned the use of the CBD zone versus the RB zone. His concern is that this case not set a precedent that could result in other applications being made in the Historic District for rezoning to the CBD zone. My client and I share his concern that the record created by this rezoning application reflect and distinguish this property from any other property in the Historic District. In discussing this with the staff, I am confident that the staff's comments to the Planning Commission for the November 5, 2003 meeting provides adequate explanation as to why this property is distinguishable from other residential properties within the Historic District. The most important distinguishing feature is set forth in the Master Plan and Zoning History of the staff comments. The 1997 Master Plan, which is currently in force, stipulates that the front half of this property was reassigned to "mixed-use" land use designation with the intent that the CBD zone be available to this property at such time as a development plan is submitted to the City as part of a rezoning request. We feel that fact alone supports our rezoning request without establishing an unhealthy precedent in the Historic District. I would further suggest that at the final hearing the Council emphasize this distinction on the record to discourage further applications for the CBD zone within this neighborhood.



As to Mr. Weincek's concerns, we hope to address and resolve the concerns as presented in his letter regarding the size and location of the new building, during the site plan approval process.

Sincerely,

CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.



JAMES R. CLIFFORD, SR., ESQ.

JRC/dlh

cc: Mayor & City Council
Matthew and Maria Glinsmann
Karl Pavlovic
Michael Weincek

G:\DATA\DCD\REAL\EST\Glinsmann Russell Avenue\keller 11 06 03.wpd

Note:
Topography shown is one-foot contour
interval as prepared by Thomas A.
Jardox, Professional Land Surveyor from
an actual field survey.

Franks P. &
W.L. Corrigan

#21 Brookes
Ave.

Lot 11

①

R-90
ZONE

Lot 14

No. 8 Russell
Avenue Condo.

CBD

RUSSELL AVENUE

Lot 1

②

R-90
ZONE

STORMWATER MANAGEMENT:
Underground water quality
device to be installed within
parking area and/or open space
area for treatment of parking lot
and rooftop runoff / systems to be
connected to existing public
storm drain.

Tree Preservation Notes:
The following four (4) trees are expected to be removed
upon development of this site -
1. Tulip Poplar (52.2' dbh / new growth)
2. Norway Maple (19' dbh - northwest corner of site)
3. Black Cherry (22.2' dbh - northwest corner of site)
4. Norway Maple (19' dbh - trees to stand / northwest corner of site)
All other trees shown are expected to be retained. Exact measures of tree
preservation and protection (i.e. tree protection fencing, root pruning, etc.) to
be determined at Final Site Plan stage.

PARKING NOTES:

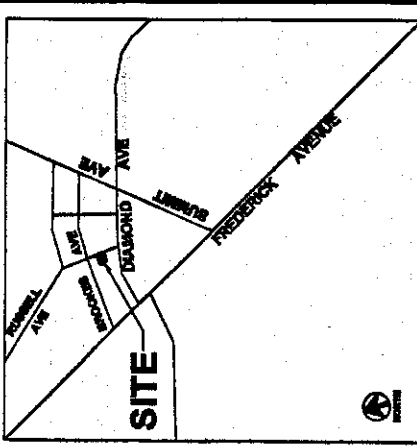
1. Number of off-street parking spaces required - 14
2. Number of off-street spaces shown - 10 (includes 1 garage space)
3. Number of accessible spaces required - 1
4. Number of accessible spaces shown - 1 (near accessible)
5. Approximate number of on-street spaces available adjacent to site - 3

GENERAL NOTES:

1. Area of Property - 15,439 sf (includes adjacent abandoned public alley)
2. Existing Zoning: R-80
3. Existing Use: Single-family Residence (vacant)
4. Proposed Zoning: CBD
5. Proposed Use: Professional Office
6. Total Gross Floor Area Shown (two buildings): 4,082 sf
7. Number of Parking Spaces Required: 14 spaces (1 sp/300 sf of office space)
8. Number of Off-Street Spaces Shown - 10 (waiver needed)
9. Height of Proposed Building (mean height between eave and ridge) - 18'-0"
10. Height of Existing Building: 25'-0" ±
11. Total Lot Coverage - 3,500 sf (21.5%)
12. Total Impervious Area - 6,000 sf (32%)
13. Total Area of Disturbance - 8,800 sf
14. Parking area lighting and other outdoor lighting to comply with "dark skies" lighting requirements.
15. Afforestation requirement and/or tree replacement requirements to be met with on-site landscaping.

PREPARED FOR:
MATTHEW & MARIA GLINSMANN
POTOMAC VALLEY BANK BUILDING
702 RUSSELL AVENUE, SUITE 312
GAITHERSBURG, MARYLAND 20877
301-972-6643

VICINITY MAP
SCALE: 1" = 2,000'

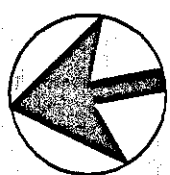


SCHEMATIC DEVELOPMENT PLAN 12 RUSSELL AVENUE

City of Gaithersburg, Maryland



Benning & Associates, Inc.
Land Planning Consultants
8833 Shady Grove Court
Gaithersburg, MD 20877
(301) 949-0748



date: August 2003
Revised 10/2003

scale: 1"=20'

JOINT
EXHIBIT
#32
Z-295(6)

...\\Carriage\\5-13-03\\finalelevs.dgn 10/27/2003 5:05:20 PM

ROSENBERG A-1
ARCHITECTURE - INTERIORS

315 EAST DIAMOND AVENUE, SUITE 4
GAITHERSBURG, MARYLAND 20877-2104
P 210.306.0110
F 210.622.6200
WWW.RA.COM

PANTRY

OTHER

SPIN

THE
GLINGMANN
CARRIAGE HOUSE
12 RUSSELL AV.
GAITHERSBURG, MD
20877

PROPOSED EXTERIOR ELEVATIONS

DATE: 05/01/03

BY: 05/16/03

REVISIONS:

SCALE: 1/4" = 1'-0"

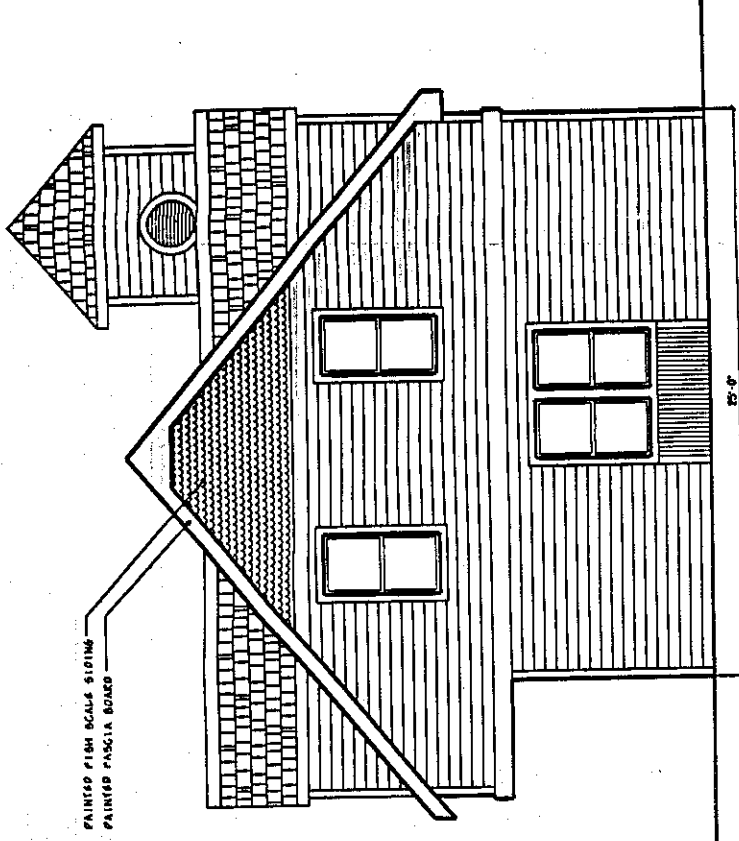
DRAWN BY: SPK/CLP

A-3

JOINT
EXHIBIT
#30

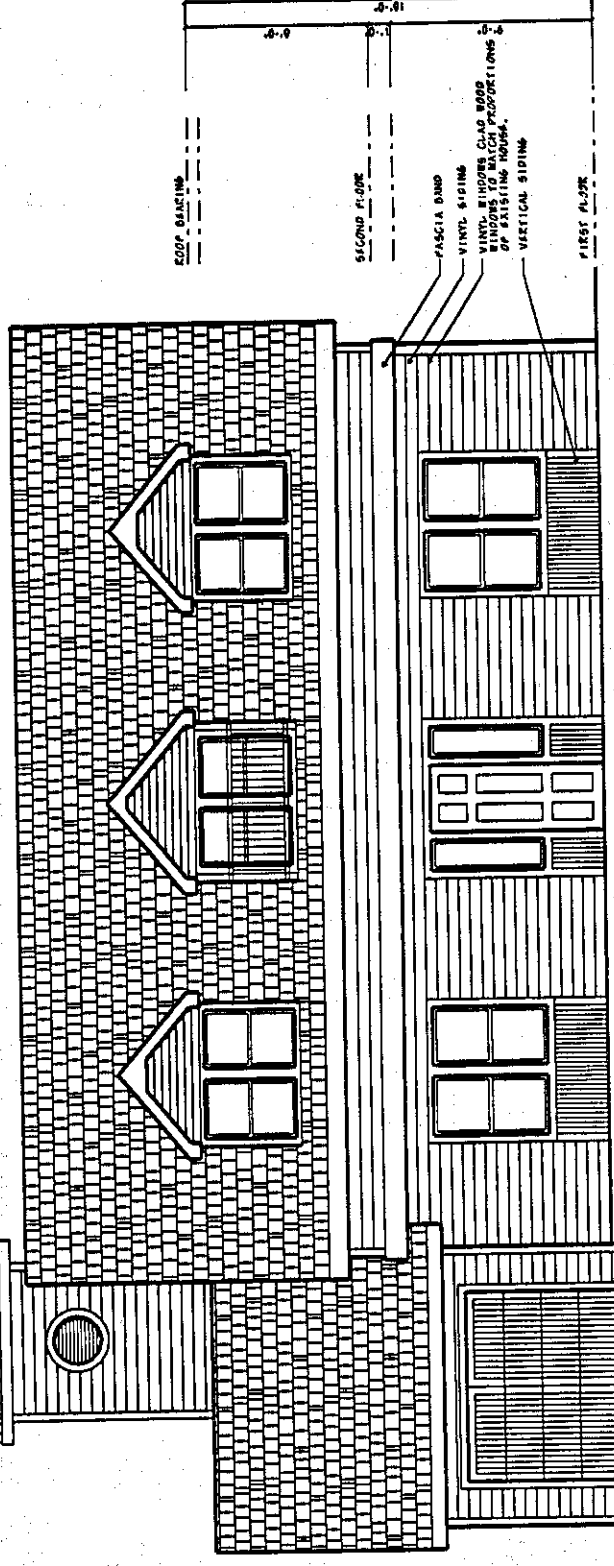
2-295(0)

REKAD-Beynon, N. L.



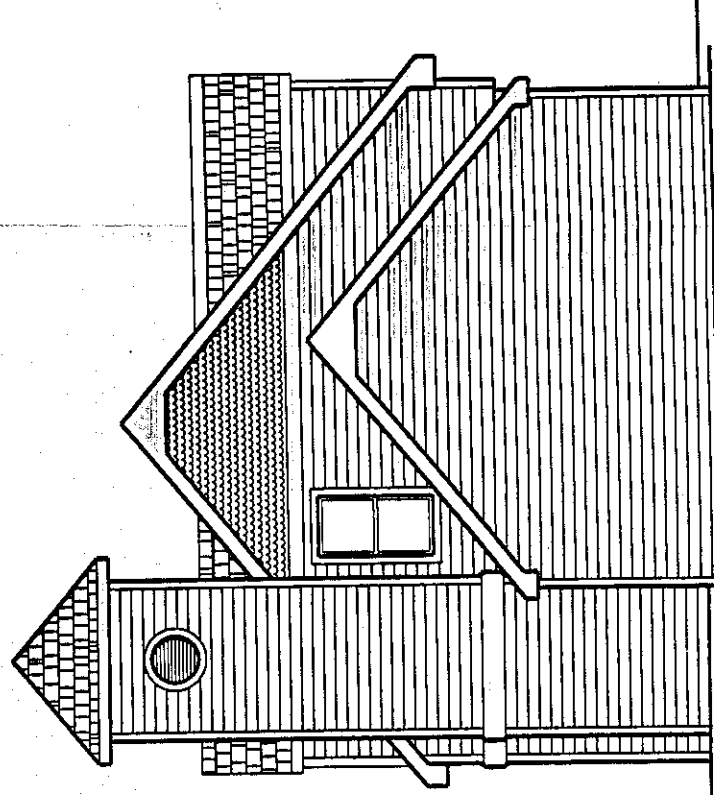
2 WEST ELEVATION, FACING RUSSELL AVENUE

DATE: 05/01/03
BY: 05/16/03
REVISIONS:



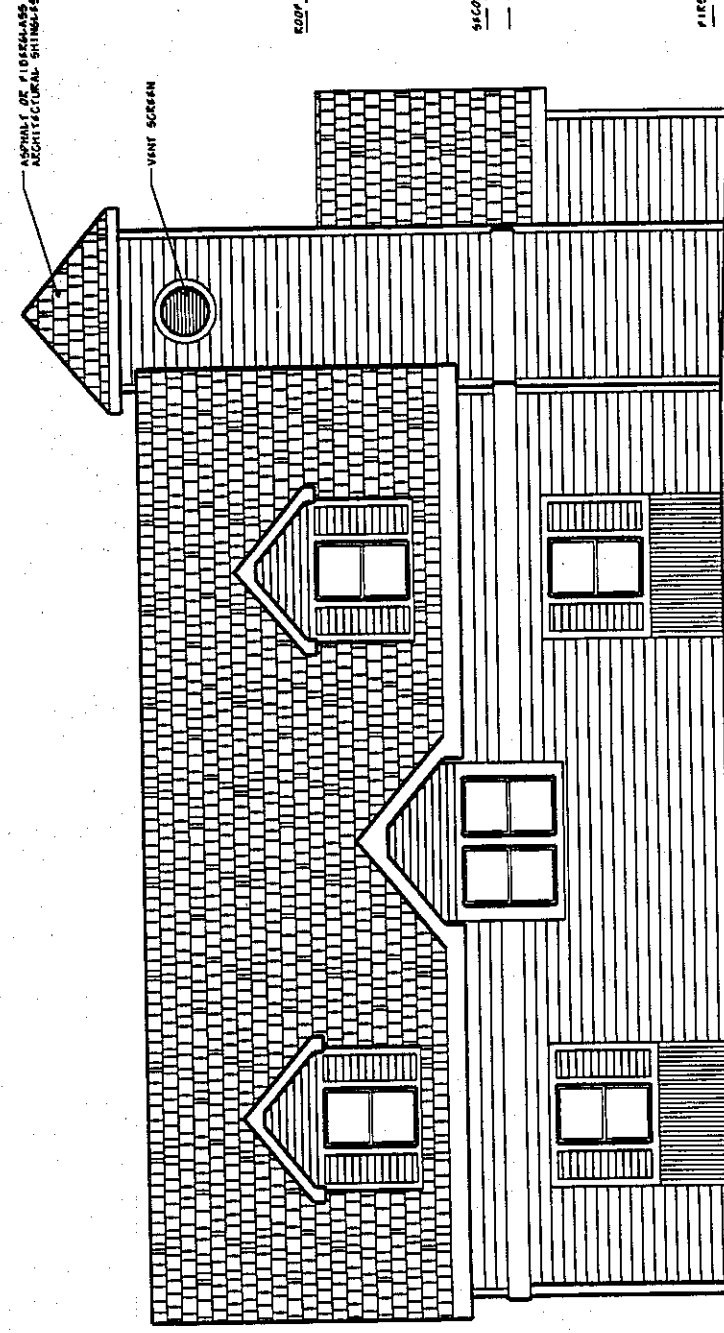
1 SOUTH ELEVATION, FACING COURTS AND PARKING

DATE: 05/01/03
BY: 05/16/03
REVISIONS:



4 WEST ELEVATION, FACING REAR OF PROPERTY

DATE: 05/01/03
BY: 05/16/03
REVISIONS:



3 NORTH ELEVATION, FACING MS LAKE

DATE: 05/01/03
BY: 05/16/03
REVISIONS:

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS made this _____ day of _____, 2003 by MATTHEW GLINSMANN AND MARIA GLINSMANN, hereinafter collectively referred to as "Declarant".

WHEREAS, Declarant is the owner of a parcel of land located in the Ninth Election District of Montgomery County, Maryland, containing 15,439 square feet of land, (hereinafter referred to as "Property") more particularly described in Exhibit "A" attached hereto; and

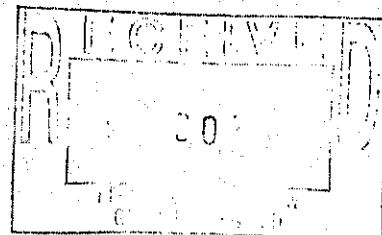
WHEREAS, the Property is the subject of a local zoning map amendment application filed by Declarant seeking to rezone the subject property to the CBD (Central Business District) zoning classification, said application having been designated Case No. Z-295(o) ; and

WHEREAS, Section 24-198 of the Gaithersburg City Code (Zoning Ordinance) provides an optional method for the filing of a local zoning map amendment in which the applicant may restrict development standards, or limit uses to less than that permitted in the requested zone; and

WHEREAS, Declarant has filed with Zoning Application No. Z-295(o) a schematic development plan restricting development standards and limiting uses to less than that permitted in the requested zone; and

WHEREAS, Section 24-198 of Gaithersburg City Code requires the filing of a Covenant confirming the restrictions and limitations set forth in the schematic development plan, as set forth in Exhibit "B" attached hereto and made a part hereof, and architectural elevations, as set forth in Exhibit "C", attached hereto and made a part hereof.

NOW, THEREFORE, Declarant hereby declares and covenants that the property that is the subject of Zoning Application No. Z-295(o) will be developed and used in the following manner:



I. Restrictions.

A. The use of buildings on the Property shall be restricted to residential and/or professional office uses exclusively.

B. The type of building to be constructed on the Property will be a "carriage house" style building to be used as a residential dwelling or professional office unit, which shall be constructed at the rear of the Property under the regulations for the Brookes, Russell, Walker Historic District of the City of Gaithersburg.

C. The existing building on the front of the Property shall be restored and converted to a professional office space unit under the regulations for the Brookes, Russell, Walker Historic District of the City of Gaithersburg.

D. The number of buildings shall not exceed one (1) new residential dwelling and/or professional office unit and one (1) existing residential and /or professional office space unit.

E. Open Space - There are no Open Space Requirements.

F. Common Use Area - None.

G. Parking - There shall be fourteen (14) parking spaces, of which ten (10) spaces are shown as off street spaces on Exhibit "B" and four (4) as on-street frontage spaces.

H. Height Restrictions. The height of the existing building is two and a half (2½) stories and the height of the new building shall not exceed two (2) stories as shown on Exhibit "C".

I. All restrictions set forth herein are based on the Zoning Ordinance standards as they appear in Chapter 24 of the Gaithersburg City Code, as amended, as it exists as of the date of execution of this Declaration of Covenants. In the future, if said standards are amended, the standards in existence on this date shall be applicable.

II. This Declaration of Covenants shall become effective upon final approval of the

subject zoning application, and shall be of no force and effect unless the requested zoning is approved.

III. The restricted development standards set forth herein shall run with the land and shall be binding upon Declarants, its successors and assigns, in perpetuity, unless (i) the schematic development plan is amended as provided by law, or (ii) any part of the subject property is rezoned, in which event this Covenant shall cease to be effective and shall terminate.

IV. This Declaration of Covenants inures to the benefit of the City of Gaithersburg, Maryland, and the covenants herein may be enforced only by the City of Gaithersburg, Maryland.

IN WITNESS WHEREOF, the hand of the undersigned as of the date set forth above.

DECLARANT:

MATTHEW GLINSMANN

MARIA GLINSMANN

STATE OF MARYLAND
COUNTY OF MONTGOMERY: to wit

On this _____ day of _____, 2003 before me, a notary public in and for the state and county aforesaid, personally appeared MATTHEW GLINSMANN AND MARIA GLINSMANN known to me or satisfactorily proven to be, the persons whose names are subscribed to this Declaration of Covenants, and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and notarial seal.

Notary Public: _____
My Commission Expires: _____

CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.

ATTORNEYS AT LAW

Olde Towne Professional Park
320 East Diamond Avenue
Gaithersburg, Maryland 20877-3016

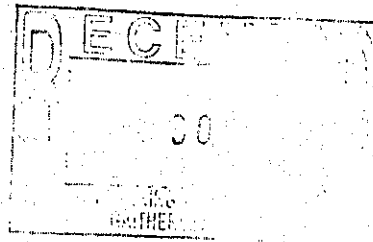
James R. Clifford, Sr. (MD, VA)
James J. Debelius (MD)
Gary L. Crawford (MD, DC)
James A. Bonifant (MD)
E. Joseph Fitzpatrick, Jr. (MD, DC, TN)

(301) 840-2232

fax (301) 975-9829

John W. Debelius (1926-1984)

October 30, 2003



Trudi Schwartz
City of Gaithersburg
Planning and Code Administration
31 South Summit Avenue
Gaithersburg, MD 20877

Re: Glinsmann Rezoning Application
12 Russell Avenue
Gaithersburg, MD 20877

Dear Ms. Schwartz:

Enclosed please find the revised Covenant along with Exhibit B, the schematic development plan and Exhibit "C", the architectural elevations. Tom Maddox, the surveyor, is currently working on a metes and bounds description of the Property and I will forward it as soon it has been completed.

Please let me know if you require any additional information or documentation. Thank you.

Sincerely,

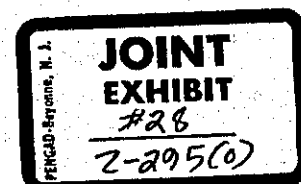
CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.



JAMES R. CLIFFORD, SR., ESQ.

JRC/dlh
Enclosures
cc: Matthew and Maria Glinsmann

G:\DATA\DCD\REALEST\Glinsmann Russell Avenue\schwartz 102303.wpd



Note:

Topography shown is one-foot contour interval as prepared by Thomas A. Maddox, Professional Land Surveyor from an actual field survey.

Francis P. &
W.L. Corrigan

#21 Brookes
Ave.
Lot 11

①

**R-90
ZONE**

Lot 14

No. 8 Russell
Condo.

THIS IS TOO
CLOSE TO THE OPEN AVENUE CONDO.
REAR YARDS FOR A
2 STORY BUILDING OF THIS
SIZE.



**SCHEMATIC DEVELOPMENT PLAN
12 RUSSELL AVENUE**

City of Gaithersburg, Maryland

IRCA

Boeing & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240



date: August 2003
Revised 10/18/03
scale: 1"=20'

**JOINT
EXHIBIT
#276
2-295(1)**

- GENERAL NOTES:**
1. Area of Property - 15,439 sf (includes adjacent abandoned public alley)
 2. Existing Zoning: R-90
 3. Existing Use: Single-family Residence (vacant)
 4. Proposed Zoning: CBD
 5. Proposed Use: Professional Offices
 6. Total Gross Floor Area Shown (two buildings): 4,100 sf
 7. Number of Parking Spaces Required: 14 spaces
 8. Number of Off-Street Spaces Shown - 10 (waiver needed)
 9. Height of Proposed Building (mean height between eaves and ridge) - 18'-5"
 10. Height of Existing Building: 25'-8" ±
 11. Total Lot Coverage - 3,300 sf (21.5%)
 12. Total Impervious Area - 8,000 sf (52%)
 13. Total Area of Disturbance - 8,000 sf
 14. Parking area lighting and other outdoor lighting to comply with "dark skies" lighting requirements.
 15. Afternoon lighting and/or tree replacement requirements to be met with on-site landscaping.

PARKING NOTES:

1. Number of off-street parking spaces required - 14
2. Number of off-street spaces shown - 10 (includes 1 garage space)
3. Number of accessible spaces required - 1
4. Number of accessible spaces shown - 1 (see accessible)
5. Approximate number of on-street spaces available adjacent to site - 3

Tree Preservation Notes:

The following four (4) trees are expected to be removed upon development of this site.

1. Maple (10' dbh) - (near garage)
2. Honey Locust (10' dbh) - (northwest corner of site)
3. Black Cherry (22' dbh) - (northwest corner of site)
4. Honey Locust (10' dbh) - (near 1/2 mile northwest corner of site)

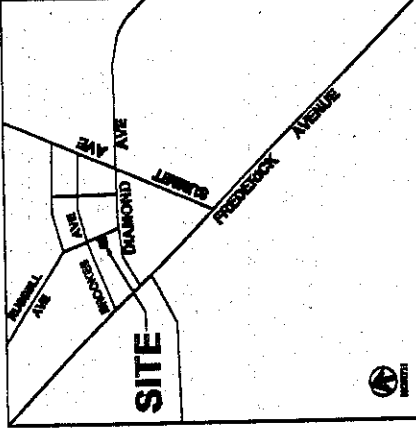
All other trees shown are expected to be retained. Exact measures of tree preservation and protection (i.e. tree protection fencing, root pruning, etc.) to be determined at Final Site Plan stage.

STORMWATER MANAGEMENT:

Underground water quality devices to be installed within parking area and/or open space area for treatment of parking lot and rooftop runoff (system to be connected to existing public storm drain).

**R-90
ZONE**

VICINITY MAP
SCALE: 1" = 2,000'



PREPARED FOR:
MATTHEW & MARIA GLINSMANN
POTOMAC VALLEY BANK BUILDING
702 RUSSELL AVENUE, SUITE 312
GAITHERSBURG, MARYLAND 20877
301-972-8843

ATTACHED
to COMMENTS
BY
MICHAEL
WIENCER

**JOINT
EXHIBIT
#276
2-295(1)**

RECEIVED
OCT 30
PLANNING COMMISSION
GAITHERSBURG, MD

PAT, 1-3

I HAVE LOOKED AT THE PROPOSED SITE PLAN ON FILE Z-295(a) AND OFFER THE FOLLOWING COMMENTS:

① IN LIGHT OF THE AMOUNT OF PAVED PARKING & ACCESS DRIVE AREA I FEEL THE PROPOSED HOUSE/FUTURE OFFICE IS TOO LARGE. EVEN THOUGH THE TOTAL LOT COVERAGE BY BUILDINGS IS BELOW THE 30% THAT WOULD BE ALLOWED IF THIS WAS IN A RESIDENTIAL BUFFER ZONE (PER OUR PREVIOUS DISCUSSION) I FIND THAT THE COVERAGE IMPACT OF THE PROPOSED BUILDING & PARKING IS ABOVE Gaithersburg AFFECTING THE

RECEIVED
Gaithersburg, N.I.
JOINT EXHIBIT
#27a
Z-295(a)

2-3
ADJACENT REAR YARDS
IN THE R-90 ZONE.

2. THE SITE & HEIGHT OF THE FUTURE/PROPOSED BUILDING WILL IMPACT THE VIEWS FROM MY REAR YARD VERY SIGNIFICANTLY. I WOULD ONLY SUPPORT A ONE STORY BUILDING WITH LOW ROOF PROFILES AND A SMALLER FOOTPRINT AT THIS LOCATION AT THE REAR OF THE SITE.

3. I FEEL THAT THE NEW CONSTRUCTION SHOULD HAPPEN MUCH CLOSER TO THE FRONT OF THE LOT. THIS COULD POSSIBLY BE DONE AS AN ADDITION TO THE EXISTING HOUSE

Gaithersburg
A CHARACTER COUNTS! CITY
www.ci.gaithersburg.md.us

3-2
I WOULD LIKE SUPPORT 2 STORIES AND A SLIGHTLY LARGER AREA. I STILL FEEL THE PROPOSED 2,200 SF IS EXCESSIVE.

PLEASE REFER TO MY MARKED UP SITE PLAN.

RECEIVED
Gaithersburg, N.I.

THANK YOU.

MICHAEL
19 BROOKES AVE

P.S. I WOULD ALSO SUPPORT THE NEW CONSTRUCTION IN THE SAME FOOTPRINT SIZE OF THE EXISTING CARPENTER HOUSE SKOWN TO BE DEMOLISHED.

JOINT EXHIBIT
#27a
Z-295(a)

22 Brookes Ave.
Gaithersburg, MD 20877
October 30, 2003

The Planning Commission for the
City of Gaithersburg
11 South Summit Avenue
Gaithersburg, MD 20877

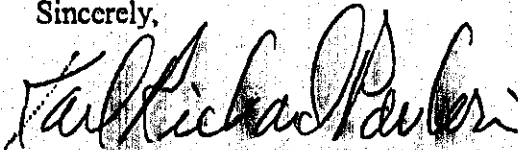
Re: Z295(o) Zoning Map Amendment - 12 Russell Avenue

Dear Commissioners:

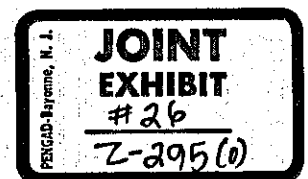
My wife and I are the owners of and residents in 22 Brookes Avenue in the Brookes, Russell, Walker Historic District in which the above referenced property is also located. We have reviewed the applicant zoning request file, particularly the special application covenant, and are satisfied that the covenant restricts use of the property to protect and preserve the historic residential character of the neighborhood.

We are concerned, however, that rezoning a property currently in a residential historic district from R-90 to CBD will create a precedent for future commercial creep into our residential neighborhood. We note that applicants cite in support of the rezoning the fact that "all those houses fronting on Russell Avenue that are historic and within the CBD Zone have converted from residential to office use." We believe this fact supports rezoning to RB with the proposed covenant, not CBD. RB zoning (1) would recognize the fact of the commercial use of the historic housing in the adjacent CBD zone and (2) would, with the proposed covenant, buffer the residential neighborhood from the commercial development in the adjacent CBD zone. This is precisely the function that the RB properties at the intersection of 355 and Brookes Avenue have admirably performed since the formation of the historic district.

Sincerely,



Karl Richard Pavlovic



TRANSCRIPT
ON
JOINT PUBLIC HEARING
Z-295(o)

Glinsmann Property (Former Burdette Property), Application Requests Rezoning of 15,439 Square Feet of Land, Currently Known as Part of Lot 12 and Part of Lot 13, Block 1, Russell and Brookes Addition, Located at 12 Russell Avenue, in the City of Gaithersburg, From the Existing R-90 (Medium Density Residential) Zone to the CBD (Central Business District) Zone, Under the Optional Method of Rezoning, in Accordance With §24-196 (Map Amendments) and §24-198 (Optional Method) of the City Code

BEFORE THE
MAYOR AND CITY COUNCIL
AND
PLANNING COMMISSION
ON

October 20, 2003

Transcribed by
Doris R. Stokes



PARTICIPANTS

MAYOR AND CITY COUNCIL

Mayor Katz
Council Vice President Edens
Council Member Alster
Council Member Marraffa
Council Member Schlichting

Absent: Council Member Somerset

PLANNING COMMISSION

Chair Keller
Vice Chair Bauer
Commissioner Levy
Commissioner Winborne

Absent: Hicks

CITY ATTORNEY

Stanley D. Abrams

STAFF

Community Planning Director Schwarz

SPEAKERS FROM THE PUBLIC

James Clifford, Sr., Esq.,
Clifford, Debelius, Crawford, Bonifant & Fitzpatrick
320 East Diamond Avenue

Mary Wiencek, 19 Brookes Avenue

- Katz This is a joint public hearing on Z-295(o), which is a request for rezoning for 15,439 Square Feet of Land, Currently Known as Part of Lot 12 and Part of Lot 13, Block 1, Russell and Brookes Addition. And Trudy Schwarz will be introducing it a little bit more than I just did. Trudy please.
- Schwarz Good evening, members of the Commission and the Mayor and City Council. This is a public hearing on map amendment Z-295(b), a request to rezone 12 Russell Avenue from the R-90 Zone to the CBD Zone under the optional method of zoning map amendments. This would mean that the property would have a covenant restricting the uses of the property recorded in the land records of Montgomery County following the, whatever action the Mayor and City Council decide to take. The property is located on Russell Avenue, between Brookes Avenue and East Diamond Avenue. It is just north of the 8 Russell Avenue condominiums. The hearing was duly advertised in the October 1 and 15, 2003 *Gaithersburg Gazette* and the property was properly posted. At the present time there are 14 exhibits in the record file. They are all referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting and in the Planning and Code Administration Office during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. Mr. Jim Clifford is here representing Matthew and Maria Glinsmann, who are the applicants and the owners of the property.
- Katz Ok. Thank you. Any questions of Trudy? If not, Mr. Clifford did you have a presentation? Please. I thought that's why you were here.
- Clifford Good evening Mr. Mayor, Members of the City Council, Madam Chairman, and Members of the Planning Commission. My name is James R. Clifford, Sr., Esq., of the law firm of Clifford, Debelius, Crawford, Bonifant

& Fitzpatrick, 320 East Diamond Avenue in Gaithersburg. This application is another part of a puzzle that we began assembling last February. It relates to a piece of property on 12 Russell Avenue that was zoned and in the family of the Burdettes since the turn of the century. The property was sorely neglected and for the last 12 years, on and off vacant and has been vacant for the last four or five years. There came a time when it was apparent that the present owners were not likely to be the ones that were going to do anything with this property to the betterment of the City. And the Glinsmann were contacted, a husband and wife law firm, that practice in the City of Gaithersburg on Russell Avenue down in the Potomac Valley Bank Building for the last 12 years or so. And they became interested in the property as their office. And they also had a secondary interest and that is that they would like to build a small carriage house on the back of the property for their mother/mother-in-law to live in. With that, we began the process of abandonment of the alleyway next door so that the site which is a little less than a 1/3 of an acre could become a little more than a 1/3 of an acre and more accommodating to the plans that the Glinsmann had. You all were kind enough to pass the resolution a few months ago to allow for that abandonment. We now come in front of you to ask for a change in the current zone of R-90 to CBD Zone and then under the optional method with restrictions included to allow them to come forward as using residential house for commercial, or I should say professional office space. In conjunction with our application, the following filings have been made: The statement demonstrating the change in neighborhood and is of course required for a change in zone. A list of all adjacent and join property owners, a suggested restrictive covenant to limiting non-residential use of the property to professional office. That particular covenant is still a work in process. What you have in front of you is just a draft and we are working closely with the staff. And we have been told by a few of the neighbors that they will also like to participate in crafting that restrictive covenant to their liking. A zoning map showing the subject property in the adjoining R-90 property on the north and west side of the

subject property; CBD zone properties on the south and a split in the zone R-90 and CBD on the zones to the east, properties to the east, directly opposite of this property on Russell Avenue. Tax assessment showing the client's ownership information for the subject property. The ordinance referred to earlier pass by the Mayor and City Council that abandoned the alley way between 8 and 12 Russell Avenue, which is now a part of that is part of the zoning change. A letter from myself asking the Chairman of the Planning Commission for a waiver of the driveway width, so by appearance, the subject property will appear residential from the street. Also within that letter is a request for a waiver of four parking spaces which otherwise will be required to be on site when and if both structures are office space. The four onsite spaces being waived, actually exist in front of the property, on the street at this time. Those are the items filed by the staff. In addition with me, I have letters to support the zoning change from the adjacent property owners. I have copies to be distributed. Those letters are from Mr. and Mrs. Freeman Sharp, owners of 16 Russell, which is located adjacent to and on the northern boundary for the subject property; they are zoned as R-90. O'Neill Land LLC, the owners of 11 Russell Avenue, which is located directly across the street, is in the CBD Zone now. Mr. and Mrs. Francis Corrigan, who are the owners of 21 Brookes Avenue, which is located adjacent and to the rear for western boundary of the subject property and they are zoned R-90. I contacted the condominium association at 8 Russell and have discussed with their board this whole project and they seem in favor of the zoning change. They have not had a chance to have a board meeting to finalize a response, but intend to do so while the record is still open. Late this evening I got a call from Carl Pavlovic who lives on Brookes Avenue and is an activist in that area, a civic activist within the historic area. He discussed with me his only concern which is, why we were requesting the CBD Zone versus residential buffer and what exactly we intended to have happen as a result of that. And I explained to him that we had discussed with the staff at length what would be the appropriate zoning. The

Planning staff sees the field as CBD with a good restrictive covenant was the best format for a zoning change for this particular piece of property. And as I said, we will be crafting a restrictive covenant to be consistent with the neighborhood's interest in this property. Having come to the end of that submission, I like to take a minute and read the statement in support of change of neighborhood. Since the last comprehensive zoning of the subject neighborhood, all those houses fronting on Russell Avenue that are historic and within the CBD Zone have converted from residential to office use. This would be from Brookes Avenue going up to Summit Avenue. These properties include 7, 9 and 11 Russell Avenue. The CBD Zone has encouraged the renovation of these historic houses on those properties. 8 Russell Avenue is a piggy back condominium, with the first floor commercial and that predates the CBD Zone, the existing of it. Russell Avenue has become the main connector road between the commercial area around Lakeforest Mall and the commercial area on Diamond Avenue in Olde Towne. With increased traffic on Russell Avenue and the success of the CBD Zone on the adjoining properties as a tool to drive compatible historic renovations, the character of the neighborhood had been altered sufficiently to justify bringing the subject property into the CBD Zone in order for the neighborhood to realize the same sort of improvement experienced at 7, 9 and 11 Russell Avenue. And to make the cost comparable to the use. As to the statement regarding the narrower driveway and the parking waivers, it is the applicant's desire to honor representations made to the adjoining neighbors to preserve the residential appearance of the property as viewed from Russell Avenue. In order to retain the residential appearance, a waiver has been requested regarding the width of the driveway that provides egress and ingress to the site. The site plan reflects the parking lot which would be established to the rear of the property in order to retain residential appearance from the street. In conjunction therewith we would like to minimize the width of the driveway so that it would be 16 ft. wide versus 20 ft. required in a commercial site

entrance. It is our understanding under Article 11, § 24-222(a) of the Municipal Zoning Code, City of Gaithersburg. The Planning Commission can approve that waiver of any requirement set forth in the Article as follows: The Planning Commission may waive any requirement of this article in whole or in part which is not necessary to accomplish the objectives of the article. The waiver may be granted after a public hearing has been conducted. Only upon the finding by the Planning Commission, that such a waiver would not be detrimental to the public health, safety, and general welfare. In conjunction with the granting of any waiver, the Planning Commission may attach conditions or safe guards it deems necessary to protect and enhance public health, safety and welfare. Because the uses of this site will be greatly restricted, we see no safety issues with a narrower entrance. Especially considering minimum traffic flow generated by the restricted uses as limited by the declaration of covenants to be submitted with the application. The applicant is also asking for a parking waiver of four spaces for the required 14 parking spaces for the subject site. Please keep in mind that for the time being, the site will be used both for residential and office. So the ultimate 14 parking space requirement will be as if the entire site and all the improvements on it were to be office, which is not the case now and will not be any time in the near future. Right now the site plan will show nine interior spaces located in the back of the property and one which is attached to the carriage house. These spaces are sufficient for the present time and meet code; however, at such time if ever the owners decide to use the carriage house as an office, additional floor spaces would be required. Fortunately the property sits on Russell Avenue where existing legal on-street parking is available in front of the subject property. All four spaces that cannot be provided on site, are available on the street fronting the subject property. Although the street parking presently exists, it is not utilized either during the day or in the evening to the best of our knowledge. Having said that, I conclude by asking the Planning Commission to support my request and the Mayor and City Council

approve the requested map amendment waivers and are willing to allow the record to be open for as long as necessary to give testimony. Thank you.

Katz Thank you very much. Mr. Clifford did you have any other presentation or anybody else from the applicant?

Clifford That's all I have.

Katz Any question of Mr. Clifford?

Clifford I do have my client here Maria Glinsmann here tonight if anybody has any questions for her.

Katz I realize that she was here, that is why I asked. Any questions of the applicant? No. Thank you very much.

Clifford Thank you.

Katz This is a time that the Mayor and Council and the Planning Commission hear from anyone who would like to speak on this public hearing topic. We ask that you please keep your remarks to no more than three minutes. Any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. Do we have anyone that would like to come before us on this topic? Let the record show that no one came. In fact Jim, some people actually left the room. What is the pleasure of the.....

Edens Mr. Mayor, there is somebody back there.

Katz Oh, I'm sorry. Please come forward. I did not see you back there. I apologize.

Wiencek Well, I don't think I had my hand up. Hi, I'm Mary Wiencek, I live at 19 Brookes. And my husband and I just concerned about that is just going to be a very full site. And also what happens after it is not going to be used for residential. Two commercial uses on that lot or professional, I guess, it seems awfully dense for that place. Jim was saying that everything on Russell is now commercial or business, but the Freemans, I mean the Sharpes is not. It is still residential and that is smack up against it. And there is another one in the neighborhood that has an apartment on Brookes Avenue and the way I understand it is that it can't be used except for family members. It can't be rented out beyond the use of the family for that purpose. And that's like three lots, not just one lot. So, it seems like a very busy, full use for one lot. I mean I know it is slightly more because of the alley, but it just still seems full on there. That is our concern.

Katz Ok. Anyone else in the audience please? None. Ok. It has been suggested that the Planning Commission hold their record open for ten (10) days.

Keller Through October 30? Do I have motion to that effect?

Bauer So moved.

Levy Second.

Keller All in favor?

Commission Ayes.

Keller Motion passes 5-0.

Katz Thank you. It has been suggested that the Mayor and Council hold their record open for 17 days. Is there a motion?

Alster So moved.

Marraffa Second.

Katz It's been moved and seconded. All those in favor please aye?

Council Ayes.

Katz Opposed? It carries unanimously (4-0). And as we mentioned at the beginning of that public hearing, anyone that would like to send in additional testimony, it would be consider just as oral testimony this evening.

END OF JOINT PUBLIC HEARING
October 20, 2003
Z-295(o)

October 17, 2003

Trudi Schwartz
City of Gaithersburg
Planning and Code Administration
31 South Summit Avenue
Gaithersburg, MD 20877

Re: Glinsmann Rezoning Application
12 Russell Avenue
Gaithersburg, MD 20877

Dear Mrs. Schwartz:

Please be advised that we have been notified of the above referenced rezoning application. We understand and support the zoning change for 12 Russell Avenue from the R-90 Zone to the CBD zone.

Thank you and please call me with any questions you may have.

Sincerely,

Mr. Francis Corrigan (By Mrs. Corrigan)
Mr. Francis Corrigan

Wendy Corrigan
Mrs. Francis Corrigan

Mr. and Mrs. Francis P. Corrigan
21 Brookes Avenue
Gaithersburg, MD 20877-2701



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Nanci Phillips Sharp - Co-owner
Freeman Sharp 16 Russell Ave

Freeman and Nanci Sharp
16 Russell Avenue
Gaithersburg, MD



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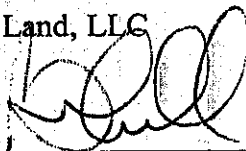
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O'Neill Land, LLC



O'Neill Land LLC
11 Russell Avenue
Gaithersburg, MD 20877



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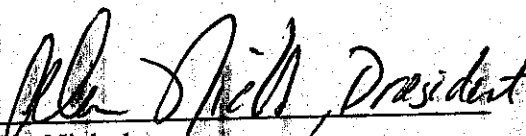
Dear Mrs. Schwartz:

On behalf of the condominium association for 8 Russell Avenue, the Board of Directors has been notified of the above referenced rezoning application. Please be advised that the Board of Directors understands and supports the zoning change for 12 Russell Avenue from the R-90 Zone to the CBD zone.

Thank you and please call me with any questions you may have.

Sincerely,

8 Russell Avenue Condominium Association


Alan Nichols

